



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 13, 2022

IN THE MATTER OF:

Appeal Board No. 621732

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 621730, 621731 and 621732, the claimant appeals from the decisions of the Administrative Law Judge filed February 1, 2022, insofar as they sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective June 23, 2020 and ending August 16, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$295 in benefits recoverable pursuant to Labor Law § 597

(4); charging the claimant with an overpayment of \$600 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 40 effective days and charging a civil penalty of \$134.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 621733 and 621734, the claimant appeals from the decisions of the Administrative Law Judge filed February 1, 2022, insofar as they sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations disqualifying the claimant from receiving benefits, effective August 16, 2020, on the basis that the claimant voluntarily separated from employment without good cause and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$600 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearing before the Administrative Law

Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for Unemployment Insurance Benefits from the State of New York on April 24, 2020, which was back dated to March 23, 2020. The claimant traveled to the State of Kentucky during the summer of 2020. She found employment in a restaurant where she worked from June 23, 2020, until August 16, 2020, as a hostess and a busser.

She worked 3 days in the week ending June 28, 2020. She certified that she worked 0 days. She worked 3 days in the week ending July 5, 2020, and correctly reported 3 days. She worked 4 days in the week ending July 11 and reported 0 days. She did not work in the weeks ending July 19 and July 26, 2020, due to COVID-19 and correctly reported that she worked 0 days worked. She worked 0 days for the week ending August 2, 2020, but reported that she worked 2 days. She worked 3 days in the week ending August 9, 2020, but reported working 2 days. She worked 3 days in the week ending August 16, 2020, but reported working 1 day.

The claimant chose to read the Information Handbook online and was familiar with the information regarding filing when working part-time. She acknowledges that when certifying she was asked how many days she worked during the certification period.

The claimant quit her employment to return to high school in New York on August 16, 2020.

The claimant received the benefits at issue.

On July 19, 2021, the Department mailed the initial determination holding the claimant not totally unemployed. The Department also mailed the initial determination for the willful misrepresentation on that date. The determination holding that the claimant had voluntarily separated from her employment was mailed on July 19, 2021. The Department mailed the initial determinations holding that there was an overpayment of regular benefits, FPUC benefits and LWA benefits, as well as the penalties for the willful misrepresentations, on July 20, 2021. The determinations were mailed to the claimant's parents' home. She does not know when they were received. She

requested a hearing by letter dated August 20, 2021, and postmarked August 24, 2021.

OPINION: Pursuant to Labor Law § 620 (1), a request for a hearing must be made

within thirty days of the mailing of the determination. The regulations of the Board, as amended, provide that a hearing request will be deemed to have been timely made if the request is postmarked within thirty days of the receipt of the determination. Absent any proof to the contrary, a determination shall be held to have been mailed on the date recited on the determination and received five business days after the mailing of the determination (12 NYCRR § 461.1).

The determinations were mailed on July 19, 2021, and July 20, 2021. As claimant does not remember when the determinations were received, an additional five business days are added to the date of determination mailing. The claimant's requests would therefore need to be mailed on August 25, 2021, and August 26, 2021, respectively. As claimant's request was postmarked August 24, 2021, we concluded that her request was timely. The merits of the determinations are therefore reached.

The credible evidence establishes that the claimant worked from June 23, 2020, until August 16, 2020, for a restaurant and was therefore not totally unemployed on the days worked. The claimant does not dispute the schedule submitted by the employer of the days when she worked. The claimant also certified for benefits during the period she worked. She did not certify to the 3 days she worked for the week ending June 28, 2020, nor did she certify for the four days worked during the week ending July 11, 2020. She failed to certify for an additional one day during the week ending August 9, 2020 or the additional two days in the week ending August 16, 2020. The claimant did not work in the week ending July 19, July 26 or August 2, 2020. However for the week ending August 2, 2020 the claimant mistakenly reported that she worked two days in that week. She correctly reported the three days she worked during the week ending July 5, 2020. The claimant admitted that she read that portion of the handbook regarding the effect of working part-time and the need to certify to those days worked. We therefore conclude that the claimant was not totally unemployed and that she made willful misrepresentations when she certified. The amount of the penalty for the willful false statements made when she certified are to be recalculated in accordance with this decision.

The claimant also admits to receipt of benefits for the weeks at issue. As

some of the regular benefits she received, she was not entitled to because she was not totally unemployed, and as she made factually false statements with respect to days worked, those benefits are recoverable. As she was not entitled to those benefits as a result of her misrepresentations, a civil penalty is imposed. The amount of the overpayment and civil penalty is to be recalculated by the Department. The federal benefits received by the claimant for those days worked are recoverable by law and are also to be recalculated in accordance with this decision.

The credible evidence also establishes that the claimant quit this employment to return to New York to attend school. The Court and the Board have held that quitting employment to attend school is without good cause. We therefore conclude that the claimant is disqualified from benefits effective August 16, 2020, due to a voluntary leaving of employment without good cause.

The overpayment of LWA benefits which she admits receiving, are recoverable as a matter of law.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from, are modified accordingly and reversed in part and modified and affirmed in part.

The Commissioner of Labor's timeliness objection is overruled.

In Appeal Board Nos. 621730, 621731 and 621732, the initial determinations holding the claimant ineligible to receive benefits, effective June 23, 2020 and ending August 16, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$295 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of \$600 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 40 effective days and charging a civil penalty of \$134.25 on the basis that the claimant made willful misrepresentations to obtain benefits, are modified accordingly, and as modified, are sustained. The penalties associated with the willful misrepresentations, and the amounts of the overpayments, are referred to the Department for recalculation in accordance with this decision.

In Appeal Board Nos. 621733 and 621734, the initial determinations disqualifying the claimant from receiving benefits, effective August 16, 2020, on the basis that the claimant voluntarily separated from employment without good cause and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$600 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER